

STANDARD TERMS AND CONDITIONS FOR POS OPERATIONS

(THESE CONDITIONS ARE NOT TO BE USED FOR CONSUMER CONTRACTS)

1. SCOPE AND DEFINITIONS

- 1.1 The terms and conditions set out in this document describe the trading policy and practice of the Company for its “POS Contract Operations”, as distinct from the supply of rail plant and equipment, and form the Standard Contract Terms and Conditions for any planning and supervision of Contract Equipment on site by the Company.
- 1.2 These terms and conditions shall not be varied except with the Company’s written agreement.
- 1.3 No other terms and conditions shall apply to any POS Contract Operations entered into by the Company unless expressly agreed in writing by means of a quotation or otherwise between the Company and the Customer. In particular, any terms and conditions specified by the Customer on an order form or otherwise, shall not be binding on the Company and shall not apply to any POS Contract Operations contract unless agreed in writing by the Company prior to the commencement of the planned works. The contract does not create any right enforceable by or purport to confer any benefit on any person not a party to it except that a person who is a successor to or an assignee of the rights of the Company is deemed to become a party to the contract after the date of succession or assignment (as the case may be).
- 1.4 Unless otherwise agreed by the Company and the Customer, these terms and conditions also apply to any additional work that the Company may agree to carry out for the Customer, and which may arise from or is connected with any POS Contract Operations.
- 1.5 The following words and phrases used in these terms and conditions have the meanings indicated:
 - 1.5.1 “Company” means the company or firm agreeing to carry out the POS Contract Operations on behalf of the Customer.
 - 1.5.2. “Contract Equipment” means any classes of plant, or replacement plant, machinery, vehicles, equipment, accessories, and any ancillary items, vehicles including haulage/delivery vehicles, or equipment which the Company uses or intends to use to complete the POS Contract Operations.
 - 1.5.3 “Contract Goods” means the Customer’s goods which are to be moved by the Company in accordance with these terms and conditions.
 - 1.5.4 “Contract Price” means the price agreed by the Company and the Customer as payment for the performance by the Company of the POS Contract Operations, which may be a lump-sum price or a time related schedule of rates.
 - 1.5.5 “Crane Controller” means the competent person who controls the lifting operation.
 - 1.5.6 “Customer” means the person or organisation requiring the Company to carry out the POS Contract Operations.
 - 1.5.7 “Machine/Plant Controller” means the person controlling the movement of the plant/Contract Equipment.
 - 1.5.8 “POS Contract Operations” means overseeing the planning and supervision of Contract Equipment on the Customer’s site as per 5.11.2 and 5.11.3 in accordance with NR/L2/RMVP/0200/P521.
 - 1.5.9 “POS/Lift Planner” means the Network Rail competency identifier for the person fulfilling the role of Appointed Person (Lifting Operations) on Network

Rail managed infrastructure as defined in 4.1 of NR/L2/RMVP/0200/P521.

1.5.10 “POS Representative(s)” is a person or persons working directly for the POS service provider who is on site to undertake an assurance role, with duties that include:

- monitoring OTP activities on site to check they are aligned with the OTP Plan.
- to be a single point of contact on site for the customer, to assist with OTP issues.
- to be a point of contact on site for the OTP operators and machine controllers who may face operational issues or pressures.
- to ‘contribute to the control of the following risks:
 - risk of runaway, uncontrolled movement, and collisions by on-track plant (OTP) with infrastructure, workforce, or other vehicles
 - risk of personal injury within a work site: slips, trips and falls, or being struck by on-track plant.
 - risk of implementing ineffective management control and supervision of on-track plant operations.’

This is not a management position or position responsible for production.

1.5.11 “Regulations and Codes of Practice” means NR/L2/RMVP/0200/P521 current version 3, or current version which supersedes this.

2. QUOTATIONS AND CONTRACT PRICE

- 2.1 Unless otherwise specified by the Company in writing, every quotation is open for acceptance for a period of 30 calendar days, after which the quotation will be subject to confirmation.
- 2.2 Unless otherwise specifically noted by the Company in writing, every quotation is based on the assumption that the following circumstances apply:
- 2.2.1. The work will be carried out in compliance with NR/L2/RMVP/0200/P521 under the Company’s direction without interruption and on a clear site with adequate approaches suitable for the set-up and completion of the POS Contract Operations.
- 2.2.2 The Company will not be responsible for the Any Line Open (ALO), unless specifically provided for in the quotation to the Customer.
- 2.2.3 The Customer will ensure that there are no changes to site conditions or requirements which result in the POS Contract Operation being aborted either through these failure(s), or other circumstances beyond the Company’s control.
- 2.2.4 The Customer is responsible for ensuring that the ground will provide proper support for any loads imposed by any Contract Equipment necessary to complete the POS Contract Operations.
- 2.2.5 All information provided by the Customer is complete, true, and accurate.
- 2.3 Where all or any of the above circumstances do not apply, the Company may issue a revised quotation for the POS Contract Operations. If the revised quotation is not accepted by the Customer, then all costs incurred by the Company to date will become due for payment and the Company may elect to be discharged from the contract without further liability to the Customer.
- 2.4 Any additional work which the Company is required to perform must be authorised by the Customer in writing and will involve an extra charge, additional to the Contract Price.

3. FORMATION AND TERMINATION OF THE CONTRACT

- 3.1 No contract is created before the Company accepts a written order or instruction for the carrying out of the POS Contract Operations. The commencement of the contract will be subject to confirmation by the Company.
- 3.2 The notice period for any prior works given from the Customer to the Company:

- 3.2.1 is recommended to be T-4 (four weeks) to ensure best practice for safe delivery and completion.
- 3.2.2 may be less than T-4 (four weeks) subject to the Company's written agreement.
- 3.3 Subject to clause 3.2, if the Customer terminates the contract:
 - 3.3.1 without the Company's written agreement, or where specialist third party Contract Equipment has been ordered at the Customer's request, the Customer will be liable for the full Contract Price.
 - 3.3.2 with the Company's written agreement, the Customer's liability for the Contract Price is subject to the written cancellation notice received by the Company before the contract commences:
 - within 4 weeks but more than 3 weeks - 25% of the price
 - within 3 weeks but more than 2 weeks - 50% of the price
 - within 2 weeks but more than 1 week - 75% of the price
 - in less than 1 week - the full contract price
 - 3.3.3 Christmas and New Year Working – A written order or instruction is to be received by the Company on or before 24th November for any Christmas or New Year Premium Shift Works. The Customer's liability will be the full Contract Price for any cancellation notice received by the Company before the contract commences unless clause 2.3 takes effect.

4. STATUS AND AUTHORITY OF CUSTOMER AND COMPANY

- 4.1 The Customer requires and authorises the Company to assume the POS Contract Operations in conjunction with NR/L2/RMVP/0200/P521.
- 4.2 The Customer must have or obtain the necessary authorisation to issue a 'Permit to Dig' licence to the Company for any excavation work which is to be carried out as part of the POS Contract Operations.
- 4.3 As part of issuing the 'Permit to Dig' licence, the Customer will:
 - 4.3.1 provide clear written evidence that the area of excavation has been investigated and confirms no debris or other hazards lie beneath the work's area.
 - 4.3.2 If clause 4.3.1 proves incorrect, then clause 8 takes effect in full.

5. DELIVERY POINT MANAGEMENT

The Customer shall undertake to:

- 5.1 clear the contract site, including public highways and access roads where necessary, of all vehicles and plant to facilitate the delivery, unloading, loading, and collection of the Contract Equipment; and where necessary, set up barricades, tapes, or cones, to the extent that the Company may at its discretion require for the performance of the POS Contract Operations.
- 5.2 where necessary, ensure road closures, bus lane closures etc. are in place, irrespective of whether the Company has arranged these on behalf of the Client, the Client is ultimately responsible.
- 5.3 ensure that the Customer's representative(s) are present on site for the 'meet and greet' with the Company's delivery driver, during deliveries and collections at site, at which point the Client's insurance(s) takes effect for the Contract Equipment as per clause 10.3.
- 5.4 settle all costs to the Company, should the Customer fail to comply with any aspect of clause(s) 5.1 to 5.3, or if there are any site issues or irregularities which results in the POS Contract Operation being aborted either through these failure(s), or other circumstances beyond the Company's control.

6. REGULATIONS AND CODES OF PRACTICE

- 6.1 The Company will perform the POS Contract Operations in accordance with NR/L2/RMVP/0200/P521.
- 6.2 The Customer shall supply, or confirm, in writing all information available to the

Customer, which is requested by the Company and/or the POS/Lift Planner or which the Customer should be reasonably aware may be necessary, or useful, to facilitate compliance with NR/L2/RMVP/0200/P521. This includes, but is not limited to, the location of anything on or near the site, above or below the ground, which is likely to be damaged by, or cause damage to the Contract Equipment, or which is likely to affect the health or safety of any person involved in the work.

7. POINTS MANAGEMENT RESPONSIBILITY

- 7.1 Responsibility for the Points Management will rest with the Principal Contractor, or where applicable, the Customer. It will not apply to the Company.
- 7.2 The Engineering Supervisor, or where applicable, the Safe Work Leader must give authority for the machine(s) to travel over the points. (This authorisation can be included in their briefing to the Machine Controller(s) and/or the Crane Controller(s) at the commencement of the shift.)
- 7.3 Before any movement is made over points, the Machine Controller must check them to make sure they are in the correct position for the movement.

8. LIABILITY OF THE COMPANY

- 8.1 The Company's total liability will be calculated on the number of days' notice received from the Customer for contract commencement against T-4 (four weeks) notice and calculated on a x/28th basis of the Contract Price.
- 8.2 The Company's liability shall be subject to clause 8.1 for loss or for damage or injury to persons or property when caused solely by the Company's negligence in the performance of the contract and shall not be liable for any such loss, or damage or injury due in whole or in part to any negligence on the part of the Client or any third party.
- 8.3 The Company's liability, if any, during any lifting operation arising from or in connection with the POS contract will be subject to clause 8.1:
 - 8.3.1 For any loss or destruction of or damage to the Contract Goods shall be limited to a maximum of £25,000 (twenty-five thousand pounds sterling) irrespective of the number of items being lifted or moved.
 - 8.3.2 For any other loss, damage or injury shall be limited to a maximum sum of £5,000,000 (five million pounds sterling)Unless a different amount is agreed in writing by the Company and the Customer prior to the commencement of the contract.
- 8.4 Full details of any loss, damage, or injury, which is or may be the subject of a claim by the Customer against the Company shall be notified by the Customer to the Company within 7 calendar days of the date of discovery thereof. Any proceedings to enforce any such claim by the Customer against the Company must be commenced not later than 12 months after the date of occurrence of the event giving rise to the loss, damage, or injury.

9. EXCLUSION OF THE COMPANY'S LIABILITY

- 9.1 The Company shall not be liable for any loss, damage or injury caused by, or arising from or as the result of, any of the following:
 - 9.1.1. Any defect in the Contract Goods, including any design defect and/or any defect relating to the lifting points on any items the Customer wants positioned during the POS Contract Operations.
 - 9.1.2. Inaccurate or incomplete information given by the Customer.
 - 9.1.3. Any instructions given by the Customer to the Company's employees.
 - 9.1.4 Any defect with any Contract Equipment provided by the Customer.
 - 9.1.5 Any act or omission of any personnel supplied by the Customer, or by any body or person under contract to the Customer in connection with the POS Contract Operations, except when correctly following the Company's instructions for the purpose of performing the Company's work under the contract.

- 9.1.6 Unexpected or unforeseen ground conditions.
- 9.2 The Company shall not be liable or responsible for any of the following, however arising:
 - 9.2.1 Loss or damage of whatever nature due to or arising through any cause beyond the Company's reasonable control.
 - 9.2.2 Whether by way of indemnity or by reason of any breach of the contract, breach of statutory duty or misrepresentation or by reason of the commission of any tort (including but not limited to negligence) in connection with the contract, for any of the Customer's loss of profit or productivity, loss of contracts with any third party, liabilities of whatever nature to any third party, and/or any other financial or economic loss or indirect or consequential loss or damage of whatever nature.

10. INSURANCE

- 10.1. The Company will carry insurance, including Professional Indemnity insurance, to cover its potential liability under the contract having regard to the maximum amounts referred to in clause 8.
- 10.2. If the value of any item that is at risk during the POS Contract Operations exceeds the Company's liability limits referred to in clause 8, then the Customer will require the Company to either:
 - 10.2.1 increase the Company's liability limits under clause 8 to an acceptable level agreed by both parties prior to the contract commencing, where upon the Customer will be charged; or,
 - 10.2.2 exclude the Company's existing policy, and for the Company to obtain a specific policy to address its liabilities under the contract, where upon the Customer will be charged.

The Customer must give sufficient written notice to the Company should either of the above points arise.

- 10.3 The Customer's insurance policies will cover their liabilities under the contract, including theft or damage to the Contract Equipment, and take effect from the 'meet and greet' as per clause 5.3 and until the agreed Contract Equipment's collection time. If the Contract Equipment is unavailable at the agreed collection time, then it will remain the Customer's responsibility, and will be charged at two-thirds of the Contract Price until collected.
- 10.4 The Customer agrees to indemnify the Company against -
 - 10.4.1 Any claim arising from or connected with the Company's work on the contract site, in preparing the site or performing the contract, including claims of nuisance and claims of trespass to persons, property or land.
 - 10.4.2 All other losses, damages or claims in respect of any matters arising from or in connection with the contract and for which, under these terms and conditions, the Customer is liable or for which under clause 9 the Company is not liable; and
 - 10.4.3 Any liability arising from or in connection with the contract to pay any amount in excess of the relevant limits referred to in clause 8.
- 10.5 The Customer shall insure against its liability to indemnify the Company and all other liabilities of the Customer under the contract.
- 10.6 If requested by the Company, the Customer shall produce a copy of any insurance policy together with evidence of the premium having been paid, held by the Customer and relevant to the contract.

11. TRANSPORTATION OF CONTRACT GOODS

- 11.1 The Company is not a common carrier.
- 11.2 If the Contract Goods or any part of them require movement during the POS Contract Operation, the Customer will arrange the necessary transportation.
- 11.3 Subject to 11.2, the Company may agree to undertake the necessary transportation on behalf of the Customer or arrange transportation by some other

person or organisation for an additional fee. Should this arise and unless otherwise agreed in writing by the Company, the Company's liability to the Customer shall be limited to the amounts stipulated in clause 8.3 or to the sums recoverable from that other person or organisation who carried out the transportation.

12. PAYMENT OF CHARGES

- 12.1 All prices quoted are exclusive of VAT, which will be charged at the rate prevailing at the date of invoice.
- 12.2 All charges by the Company are payable on the agreed contract terms from the date of the Company's invoice or as set out in the contract offer.
- 12.3 All charges are payable in full, and the Customer shall not withhold payment as retention or discount or for any reason whatsoever, regardless of any arrangements for payment to the Customer by another party under any other contract.
- 12.4 The Company shall be entitled to enforce its right to add interest and administration costs for late payments under the Late Payment of Commercial Debts Regulations 2002 or any other subsequent Regulations that supersede them.

13. LAW OF THE CONTRACT

- 13.1 The Company will determine which court will have exclusive jurisdiction and interpretation of the law for this Contract be it governed by the country where the Company's Head Office or site is located.
- 13.2 Both parties to the Contract have a right to refer any difference or dispute arising under or in connection with the Contract to adjudication and the procedure set out in Part 1 of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (or such equivalent legislation which confers on the parties the statutory right to adjudicate within the relevant jurisdiction (or any amendment or re enactment thereof for the time being in force) will apply. The person (if any) specified in the contract to act as adjudicator may be named in the quotation. The specified nominating body to select adjudicators shall be the Construction Plant-hire Association acting by its President or Chief Executive for the time being.
- 13.3 The Company and the Customer shall comply forthwith with any decision of the adjudicator; and shall submit to summary judgment and enforcement (and/or, under Scottish law, shall consent to a motion for summary decree and submit to enforcement) in respect of all such decisions; in each case, without any defence, set-off, counterclaim, abatement, or deduction. Where, under Scottish law, the Company, the Customer, or the adjudicator, wishes to register a decision of the adjudicator for execution in the Books of Council and Session, any other party shall, on being requested to do so, forthwith consent to such registration by subscribing the decision before a witness.

FOOTNOTES

- 1) Acceptance of the Contract Equipment on site implies acceptance of all these terms and conditions.
- 2) These standard terms and conditions for POS Contract Operations are the copyright of the Rail Plant Association and Construction Plant-hire Association and must NOT be reproduced, stored in any retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise unless they are current members of the Rail Plant Association and Construction Plant-hire Association.
- 3) Copies of these standard terms and conditions are only available from the Rail Plant Association and Construction Plant-hire Association.